

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

V.

Civil Action
No. 92-2062-ML/A

STATE OF TENNESSEE, et al.,

Defendants.

REMEDIAL ORDER

ORDER

Defendants are hereby Ordered to take the following actions to guarantee the statutory and constitutional rights of residents of Arlington Developmental Center (ADC). Defendants shall remedy the constitutional and statutory deficiencies identified in the Supplemental Findings of February 18, 1994.

I. PROTECTION FROM HARM

Defendants shall provide a safe and humane environment at ADC and protect residents from abuse, mistreatment and neglect. Defendants shall immediately act to properly supervise residents of ADC and otherwise protect them from harm. To this end, and at a minimum, Defendants shall:

A. Immediately provide 1:1 staffing to residents exhibiting the most severe self-injurious or aggressive behaviors, and any other resident who is determined by the Chief Psychologist, the interdisciplinary team or a physician to require such staffing to ensure safety. Staff providing 1:1 coverage shall be specially trained in the appropriate behavior management and teaching techniques applicable to the resident for whom they are providing the 1:1 coverage.

B. Provide adequately trained and supervised direct care staff to meet a 1:4 (day), 1:4 (evening) and 1:8 (night) staff-to-client ratio. This ratio shall be calculated by counting only staff actually present at ADC. Staff engaged in housekeeping or other chores, may not be counted to meet the staffing ratio. Furthermore, staff assigned to 1:1 interaction with a particular

resident may not be included in meeting the staffing ratio for the other residents in the area.

C. Prepare a monthly injury report that describes type of injury, resident(s) involved, location, shifts and staff present or on duty for the purpose of identifying factors leading to such injuries. All reports, including recommendations to reduce the incidence of injury, shall be reviewed by the Abuse and Neglect Prevention Committee and the Behavior Management Committee.

D. Defendants shall ensure ADC residents are protected from abuse, neglect, and preventable injuries; unnecessary restraint and restrictive procedures, and unnecessary medication through, prevention, reporting, investigating and resolution techniques. Prevention includes elements of staff training and supervision. Systematic review of information about abuse, neglect and injuries shall occur in order to eliminate the conditions and practices that contribute to the occurrence of such incidents. The Defendants shall accomplish this in the following ways:

1. The Defendants will hire two full-time investigators who will report directly to the Assistant Commissioner for Mental Retardation Services and who will be assigned to ADC to investigate abuse, mistreatment, and neglect, including injuries for which the investigator has suspicion of abuse, mistreatment, or neglect and all injuries of an unknown cause. The number of investigators may be adjusted with the approval of the Monitor.

2. Qualifications of Investigators will include:

- a. Professional training and experience in conducting investigations.
- b. Demonstrated skill in investigation techniques and in interviewing.
- c. Training on conducting investigations in institutions serving developmentally disabled persons. Such training may be obtained after hiring but before assigned a case to investigate.

3. Responsibilities of Investigators will include:

- a. Publish prominently his or her name, phone number, and current photograph in all residential, program, and office areas and distribute the written materials to all staff, parents or guardians, and consumers.
- b. Receive all allegations of abuse, mistreatment, and neglect and perform a preliminary investigation to determine whether an allegation is founded or unfounded.
- c. Report in writing all allegations of abuse, mistreatment, or neglect and the Investigator's determination that the allegation was founded or unfounded to the Abuse and Neglect Prevention Committee and the Superintendent.
- d. Investigate fully all allegations of abuse, mistreatment, and neglect determined to have foundation and prepare a detailed, written report of the investigation and its findings, specifying whether or not abuse, mistreatment, or neglect has been confirmed and whether or not the perpetrator has been identified.

e. Provide the reports of all investigations to the Chairperson of the Abuse and Neglect Prevention Committee and appear before the committee to present the evidence of the investigation and answer the committee's questions.

f. Investigate all suspicious injuries and injuries of unknown cause to determine if possible abuse, mistreatment, or neglect has occurred and if so, treat the injury as an allegation of abuse, mistreatment, or neglect.

g. Track repeated incidents of confirmed abuse, mistreatment, or neglect of an individual resident and meet with the resident's Interdisciplinary Program Coordinator (IPC) following any second incident with respect to a resident and each succeeding incident within a one year time period.

h. Track the time, location, and staff present for all injuries and all confirmed abuse, mistreatment, or neglect when perpetrator is unknown. The investigator will analyze this information for trends and when trends emerge, report such information to Department of Mental Health and Retardation (DMHMR) and the Superintendent. Defendants will take appropriate action as a result of the information provided.

i. Make recommendations to IPCs and the safety officer of any measures designed to reduce abuse, neglect, or injuries.

j. Train all staff on reporting allegations of abuse, mistreatment, and neglect and on preserving evidence.

K. Maintain confidentiality concerning information relating all allegations and investigations, except to the extent mandated by the operation of state law.

4. An Abuse and Neglect Prevention Committee will be formed at ADC.

5. The Abuse and Neglect Prevention Committee will be composed of sufficient numbers of staff to ensure the attendance of at least five members at all meetings, . three of whom will be ADC staff and at least one of whom will not be employed by ADC or DMHMR. Members of the committee will include the Consumer Advocate, an ADC Trustee, staff with no history of abuse or neglect, and members of the community. The chairperson (or alternate chairpersons if required) of the committee will be elected by the committee from among the ADC staff serving on the committee. Any ADC staff directly involved in a case will not be a member of the committee hearing that case.

E. All direct care staff will be trained to appropriately supervise residents in order to reduce abuse, neglect and mistreatment. All direct care staff will be trained to recognize and report abuse neglect and mistreatment.

II. STAFFING

Defendants shall ensure that a sufficient number of nurses, physicians, psychologists, registered physical therapists and other staff are employed to fulfill the requirements of this Order. To this end, and at a minimum Defendants shall:

A. Employ a sufficient number of registered and licensed practical nurses to provide adequate nursing services to residents.

B. Defendants must retain a Chief Psychologist who meets the qualifications set forth in this section and who is capable of performing the responsibilities listed herein.

1. Qualifications of Chief Psychologist

a. A Ph.D. in psychology specializing in applied behavioral psychology.

b. Experience assessing the behavior treatment needs, including functional analysis, of developmentally disabled persons with severe maladaptive behavior; developing, implementing, and evaluating Individual Behavior Treatment Programs (BTPs) for such individuals; and supervising other psychologists in these professional practices.

C. Hire or retain the services of Masters level psychologists sufficient to provide adequate psychology services to all residents.

D. Provide sufficient psychiatrists to provide adequate and appropriate psychiatric services to all residents who need such services.

E. Retain the services of a psychiatrist to provide adequate psychiatric services to all-residents who need such services.

F. Retain the services of an orthopedist to provide adequate orthopedic services to all residents who need such services.

G. All staff training required by this Order shall be conducted by individuals with demonstrated expertise in the particular field, documented both as to time, duration, attendance and results, and all training, unless for good cause, shall be task-analyzed and competency-based. Defendants shall record each training session and identify employees trained. All new employees shall be provided appropriate training in a timely manner.

III. PSYCHOLOGY AND HABILITATION

Defendants shall provide adequate and appropriate psychology and habilitation services for ADC residents. Defendants shall develop for each resident an individualized training program designed by competent and qualified professionals to: 1) develop or maintain his or her functional skills, including skills in the areas of communication, self-help, safety and daily living; and 2) reduce or eliminate unreasonable risks to personal safety or unreasonable use of bodily restraints. In order to fulfill this requirement, Defendants shall, at a minimum:

A. Have qualified professionals conduct an evaluation and assessment, including functional analysis, of each resident exhibiting maladaptive behavior, including self-injurious, aggressive, and/or pica behaviors, to determine his or her

individual need for training to reduce or eliminate those behaviors.

B. Have qualified professionals conduct an evaluation and assessment, including functional analysis, of each resident to determine his or her individual need for training to develop new, adaptive skills, including self-care skills.

C. Develop and implement a training program for each resident. Each training program shall contain, at a minimum:

1. Objectives developed by an appropriately constituted interdisciplinary team (IDT) that are based upon appropriate, assessments and evaluations and contain professionally based objectives both to reduce inappropriate behaviors and develop new skills;
2. Specific instructions for those responsible for implementing the training program; such methods shall emphasize positive approaches and positive behavioral interventions which promote functional skill development and socially acceptable behaviors in the resident;
3. A specific training schedule to be followed, with sufficient hours of training to permit the resident to have a reasonable opportunity to reach the identified training objectives; scheduled activities shall take place on weekends as well as weekdays;
4. Data collection procedures sufficient to permit a qualified professional to evaluate the effectiveness of the training program, to monitor the implementation of the

training program and enable its modification, as necessary;
and,

5. Identity of persons responsible for the implementation of the program.

D. Within 30 days of the development of the programs referenced above, ensure that staff are trained to implement the training program of each resident under their care, including knowledge of program objectives and responses to maladaptive behaviors.

E. Fully implement all training programs.

F. Require a qualified professional to supervise implementation of training programs, including having line authority over direct care staff involved in any type of training or programs.

G. Implement procedures to assess and evaluate each resident's progress on behavior and training programs, including the collection of reliable data on the target behaviors.

H. Train all direct care staff in collecting and maintaining relevant data and provide training periodically thereafter to maintain data collection skills. Ensure that all direct care staff are trained in the skills necessary to perform the tasks required to provide adequate and appropriate psychology and habilitation services.

I. Develop procedures to review the progress of each resident at least quarterly in order to ascertain the adequacy and effectiveness of the training programs. Review of residents'

progress under a training program that includes a reduction component to reduce aggressive or dangerous behaviors must occur at least monthly or more frequently in the case of severe self-injury or aggression, in order to ascertain the adequacy and effectiveness of the behavior programs. Programs found upon review to require modification must be modified.

J. Retain expert consultant assistance necessary to comply with paragraphs III. A to III. I in order to carry out the tasks identified above.

K. The Chief Psychologist will have at least the following responsibilities:

1. Oversight of Individual BTPs: (1) ensure compliance with relevant ADC policies and procedures; (2) conduct quarterly peer reviews based on these policies and procedures with the assistance of a non-ADC psychologist whose qualifications are similar to or complement those of the Chief; (3) conduct regular meetings with staff psychologists to review critical cases; (4) chair the Behavior Management Committee which will review and approve programs recommending the use of restraints and other intrusive procedures; (5) review monthly Risk Management Reports for the use of emergency physical and chemical restraints; and (6) review reports of confirmed abuse, mistreatment, and neglect and injury reports to determine the need for additional behavioral interventions for residents who are subjects of these reports.

2. Training of Staff Psychologists: (a) inservice staff psychologists on the Individual BTP policies and procedures; (b) provide technical assistance and consultation on an individual basis with respect to assessment of individual resident's needs, development of Individual BTPs, and evaluation of the effectiveness of Individual BTPs.

3. Employment of Staff Psychologists: (a) approve the hiring and retention of staff psychologists; and (b) evaluate semi-annually the work of each staff psychologist based on the quality and effectiveness of the Individual BTPs developed by the staff psychologist.

4. Review weekly all serious injury and abuse reports for residents who are on Individual BTPs. For each incident, confer with a resident's staff psychologist to determine if modifications of Individual BTPs or additional staff training could reduce serious injuries or abuse of the resident. If further staff training is indicated, notify the Assistant Superintendent for Residential Services.

5. Review staff psychologists' reports of problems with other staff member's implementation of the BTP and data collection and discuss these with the appropriate Program Director. If these problems are not resolved within one month report them and the lack of their resolution to the Assistant Superintendent for Residential Services.

6. Notify the Superintendent in writing of any problems that limit the effectiveness of Individual BTPs, including

problems related to cooperation, implementation, and both staff and material resources.

L. The Behavior Management Committee (BMC), including a primary care physician, shall meet to review those aspects of each resident's training program relating to the resident's maladaptive behavior(s) and relevant progress notes for each resident:

1. who exhibits self-injurious behavior or causes injury to self or others through aggressive behavior and whose training program includes bodily restraint or psychotropic medication, or
2. for whom bodily restraint procedures are utilized three or more times within any six-month period, or who receives psychotropic modifying medication.

M. Where a resident suffers a serious or significant self-inflicted injury or inflicts a serious or significant injury on another resident, the psychologist assigned to the resident shall conduct an immediate review of such behavior(s) and report the results of such review to the BMC. In all reviews conducted by the BMC pursuant to this paragraph, the BMC shall ascertain whether (a) there is sufficient behavioral data recorded, (b) such data are reliable, and (c) the continuation of the current training or treatment program is justified, or the program, including medication, should be modified. Where inadequate or unreliable data are found, or the continuation of the training or treatment program is otherwise not justified, the matter shall be referred to the appropriate IDT which shall, within 30 days from

the referral, modify the existing training program in accordance with the judgment of qualified professionals, including the primary care physician, psychologist and psychiatrist, as appropriate. The BMC shall meet at least every three months during the first year of this order and at least semi-annually thereafter. The BMC and ADC's Human Rights Committee (HRC) shall be reconstituted in a manner sufficient to meet the requirements of this Order.

IV. RESTRAINT

Defendants shall ensure that unnecessary or inappropriate restraints are not used at ADC. To this end, and at a minimum:

A. Every behavior program that utilizes restraint or time out must specify:

1. the behavior that initiates the use of the restraint or time out;

2. behaviors to be taught to the resident to replace the behavior that initiates the use of the restraint or time out or other program to reduce or eliminate the use of the bodily restraint or time out;

3. the restriction, i.e., restraint or time out authorized, including the restriction's duration;

4. the professional responsible for the program and the direct care workers authorized to implement it; and,

5. the frequency with which behavioral data is to be recorded by direct care workers.

B. Defendants shall, in order for a restrictive procedure to be included in a behavior treatment program, document in the resident's record that other, less restrictive techniques were systematically employed as part of a professionally designed training program and were ineffective.

C. Defendants shall document each time restraints or time out is used and the length of time for each use. The BMC shall conduct a monthly review of each use of restraint and each use of time out. The Human Rights Committee shall also review restraint usage on a regular basis. Each committee shall make recommendations with respect to the appropriateness of the use and continued use of the restraint, which recommendation shall be promptly implemented.

V. PSYCHIATRY AND THE USE OF DRUGS

Defendants shall provide adequate and appropriate psychiatric and mental health services to residents who need such services and ensure that the use of psychotropic drugs is appropriate. Medication shall not be administered as punishment, in lieu of a training program, or for the convenience of staff. To this end, Defendants shall, at a minimum:

A. Appropriately prescribe and administer medications for residents.

B. Initiate and implement a system which requires that every behavior program that utilizes psychotropic¹ medication specifies:

(1) the behavior that initiates the use of the psychotropic medication; and

(2) the behaviors to be taught to the resident to replace the behavior that initiates the use of the medication or other program to reduce or eliminate the use of the medication.

C. Document that, prior to using the psychotropic medication, other, less restrictive techniques have been systematically tried as part of a training program and have been demonstrated to be ineffective. Such documentation in the resident's record must include reliable behavioral data collected on the resident.

D. Administer prescription medication only upon order of a physician and psychotropic medication only upon order of a physician after consultation with a psychiatrist, except in case of an emergency use of psychotropic medication, which must be reviewed within 24 hours of the order being written. The psychiatric consult shall be obtained to determine whether the use of any medication is supported by a diagnosis of mental illness (or other medical reason), that the diagnosis is justified by the resident's history as set forth in his/her written record and current symptoms and that the dosage is

¹As used here, psychotropic medication also includes any medication of other classes that is used specifically for the purpose of altering a resident's behavior.

appropriate. In making this determination, the consulting psychiatrist shall make a complete assessment of the resident, including observation of the resident, examination of the resident's medical and behavioral record, and consultation with the resident's primary care physician, psychologist and other IDT members, including direct care staff.

- E. 1. Establish and implement procedures to review the drug regimen of each resident every 30 days;
- 2. Have a physician note in the record of each resident receiving psychotropic medication the mental illness diagnosis for which the medication is prescribed and the dosage level;
- 3. Evaluate each resident receiving psychotropic medication for drug-induced side effects, at professionally determined intervals;
- 4. Permit to administer medication only those staff qualified under State law to do so;
- 5. Record in each resident's record and report separately to appropriate professional staff any medication error or adverse drug reaction;
- 6. Ensure that all residents with seizures are prescribed the fewest number of different medications appropriate for effective seizure management.

F. Require a psychiatrist to serve on the IDT of any resident whose individual plan of service includes the use of psychotropic medication or for whom such has been recommended.

In addition, a psychiatrist or other mental health professional should serve on the IDT of any individual who receives, or is recommended to receive, other mental health services.

G. Train all clinical and direct care staff to recognize signs of mental illness in order to refer residents for psychiatric consultation.

VI. MEDICAL CARE

Defendants shall provide ADC residents with adequate and appropriate medical care, including adequate medical specialty services. To that end, and at a minimum, Defendants shall:

A. Retain the services of a Developmental Medicine Physician. The role of this physician need not be limited to responsibilities at ADC, but for a period of two years, at least approximately 75% of this physician's time will be devoted to ADC. This physician will have the following responsibilities:

1. Exercise clinical supervision of the ADC physicians.
2. Participate in the selection, evaluation, and retention of medical specialists and other physicians.
3. Chair the Physician Peer Reviews and serve on the Mortality Review Committee and participate in the Nursing Peer Reviews. In the interim, if the Developmental Medicine Physician is a consultant, he or she will co-chair the Physician Peer Reviews and serve on the Mortality Review Committee with the Medical Director.
4. Provide on-going in-service and individual consultation to the ADC physicians and consultation to medical specialists.

5. Evaluate, with the Medical Director, semi-annually each primary care physician based on the adequacy and appropriateness of health care provided to ADC residents.

6. Serve as a consultant to the Clinical Nutritional Management Teams and other therapists.

B. Require primary care physicians to be responsible for and oversee the provision of health care for the residents for whom they are responsible. Primary care physicians shall, in a timely manner:

1. Evaluate each resident for whom they are responsible;
2. Determine what specialized medical services these residents need and ensure that residents receive such services;
3. Take appropriate action to respond to recommendations of outside medical specialists and laboratory findings, documenting what action has been taken and the reasons therefor.

C. Under the supervision of the Developmental Medicine Physician, primary care physicians will be responsible for and oversee the provision of adequate and appropriate health care to all residents assigned to them.

1. For all residents, the primary care physician will develop a comprehensive problem list and an annual medical plan for each resident and will participate actively in the prevention of health risks to residents, including, but not limited to, the prevention of injury and abuse.

2. For persons with special needs, the primary care physicians will:

(a) Provide appropriate medical management for residents with feeding disorders, and work cooperatively with the Clinical Nutritional Management Teams and appropriate medical and dysphagia specialists to ensure that residents are fed safely and properly, obtain needed medical and/or surgical interventions, and receive adequate nutrition and hydration.

(b) Provide appropriate medical management, including timely and appropriate interventions or referrals, for residents with acute and chronic orthopedic disorders, and work cooperatively with physical and occupational therapists to prevent residents from suffering unnecessary pain, disfigurement, or loss of mobility and function.

(c) Provide appropriate medical management for residents with seizure disorders, and work cooperatively with neurology consultants to ensure the residents receive treatment that is therapeutic, safe, and effective.

(d) Provide appropriate medical management for residents who have behavior disorders or who are receiving psychotropic medications; and work cooperatively with staff and consulting psychologists, psychiatrists, and mental health counselors to ensure residents receive appropriate and effective treatment services.

(e) Provide adequate emergency medical care, working cooperatively with medical and non-medical staff to ensure that the living units they are assigned to are adequately

staffed with individuals trained in emergency response and that the units are adequately equipped with necessary emergency equipment.

(f) Participate in the process of outplacement for any residents for whom they are the attending physician, including assessing the medical strengths and weaknesses of the resident being considered for outplacement, analyzing the medical resources that the resident may require in the community, and assisting in the determination of the appropriateness of the community setting chosen for the resident.

(g) Ensure that all mechanical restraints are safe and medically appropriate for the individuals on whom they are used.

D. Under the supervision of the Medical Director and the Developmental Medicine Physician, ADC physicians will regularly review all residents for their need for evaluation, consultation, and treatment by medical specialty consultants, including board certified neurologists, orthopedists, gastroenterologists, psychiatrists, ophthalmologists, otorhinolaryngologists, physiatrists, and gynecologists, and record the outcome of this review in the residents' records. Defendants will ensure that medical specialists provide adequate and appropriate medical care. The requirement that specialists be board certified may be waived by the Monitor on an individual basis and is hereby waived

for board eligible consultants serving under the contract with the University of Tennessee.

E. Each resident's primary physician will ensure that needed medical specialist consultations are obtained in a timely manner and will follow-up on specialists' recommendations including monitoring blood tests and other necessary lab work and will document the reasons for not following specialists, recommendations when this occurs.

F. ADC medical staff will provide adequate and appropriate medical care for seizure disorders, including appropriate evaluation, management and treatment. Toward this end, Defendants will ensure that the following actions are taken:

1. The consulting neurologist(s) retained by ADC will complete the process of examining and evaluating all residents who receive anticonvulsant medication to assure correctness of diagnosis and efficacy of treatment. Thereafter, the frequency of follow-up will be determined by the medical judgment of the consulting neurologist(s). Residents receiving two or more anticonvulsant medications, or residents who have had five or more seizures in the preceding 12-month period will be examined by a consulting neurologist at annually.

2. ADC primary care physicians will refer residents for neurology consults when appropriate, The results of the consultant's findings and recommendations will be maintained in the resident's medical record. The primary care physician must review and respond to all recommendations by the neurology

consultant. If the primary care physician determines that the consultant's recommendation will not be followed, valid clinical justification for that determination must be documented in the resident's medical record.

3. Anticonvulsant medication levels will be used to guide therapy, in conjunction with clinical judgment. Levels will be monitored at professionally appropriate time intervals during initiation or change in therapy. Once a therapeutic dose is established, anticonvulsant medication levels will be routinely monitored at least every six months. Levels will be monitored at other times as clinically indicated. Therapeutic drug monitoring and physician follow-up of anticonvulsant medication blood levels will be monitored by a quality assurance process.

4. If a resident is to be maintained on sub-therapeutic or potentially toxic levels of anticonvulsant medication, that therapy will be in consultation with a neurologist and justification will be documented in the resident's record. A review by the consulting neurologist(s) of residents in these categories will be performed and the frequency of follow-up will be determined by the consulting neurologist.

5. In the process of attempting to achieve monotherapy, if the resident suffers an increase in the number of seizures despite adequate blood levels of the primary anticonvulsant medication, referral to the consulting neurologist(s) will be made.

6. Residents who have been seizure free, for two years or more will be assessed, in consultation with a neurologist, as to the appropriateness of medication withdrawal. The decision as to the appropriateness of medication withdrawal, as well as any withdrawal plan, will be documented in the resident's medical record.

7. ADC will immediately cease administering medications by the intra-muscular (IM) route for residents in status epilepticus. Residents in status epilepticus shall be immediately transported by ambulance to emergency care at an acute care hospital. Anticonvulsant medications will be administered to residents in status epilepticus via intra-venous (IV) or rectal routes only. Residents who are potentially at risk for status epilepticus or to periodic prolonged series of seizures will be identified, and a plan developed by the primary care physician and neurologist which sets out planned or recommended treatment for that individual if status or a series of seizures occur.

8. Track seizures by accurately recording each seizure. All staff, including nursing and direct care, shall be trained in how to recognize a seizure, describe the type of seizure and length of time it lasts and record that information in the resident's record. Defendants shall implement a quality assurance process to ensure that all seizures are being appropriately documented.

9. Staff physician performance in seizure management will be reviewed in the Physician Peer Review process and will also be monitored by a quality assurance process implemented by ADC nursing staff. This monitoring process involves a review, at specified intervals, of a percentage of the charts of residents receiving anticonvulsant medications. The criteria monitored include type and number of anticonvulsant medications, level of seizure activity, timeliness of laboratory tests, physician response to abnormal lab results, physician follow-up of neurology consultant recommendations, and need for neurology consultation. Findings of this monitoring shall be reported to the ADC Medical Director for appropriate responsive action.

G. Train all staff physicians, registered nurses (RNs), licensed practical nurses (LPNs), Development Technician Trainers (DTTs) and Developmental Technicians (DTs) who regularly provide direct care services at ADC with training in emergency procedures, including the proper way to administer cardio-pulmonary resuscitation. Thereafter, Defendants shall evaluate, through the use of drills, the competence of all participating staff to perform emergency medical procedures, document such evaluations and provide such additional training as the evaluations indicate is necessary to ensure staff competence in emergency procedures. Further, Defendants shall make medication and equipment commonly used in emergencies readily available to qualified staff in each residential unit.

H. The Defendants will develop and negotiate agreements with hospitals serving ADC residents to require the timely transfer of records to and from acute care hospitals as follows:

1. When residents are admitted to acute care hospitals or other treatment facilities outside of ADC, adequate and appropriate records are to accompany the residents including, but not limited to the following: referral for emergency care or hospital admission; physician progress notes; active and inactive problem lists; authorization for treatment; and physician's orders of the last 90 days, including current medication orders.

2. When residents are discharged from an acute care hospital for readmission to ADC, at a minimum, the following information will accompany the resident: the diagnosis and treatment recommendations for ADC to follow. ADC physicians or nurses will document telephone orders made by acute care hospital physicians.

3. When residents are discharged from acute care hospitals or other outside treatment facilities, ADC will receive, in a timely manner, hospital records including, but not limited, to the following: diagnosis and course of treatment; physician's progress notes; discharge summary; plan for follow-up; and pertinent laboratory findings, diagnostic evaluation reports, and consultation reports. ADC physicians will obtain by phone and document in the residents' record relevant information about the resident's hospital stay while awaiting receipt of these hospital records.

4. For residents who were admitted to hospitals or other outside facilities while these agreements are being negotiated, ADC will obtain from these facilities a record of the hospital stay including diagnosis, course of treatment, and discharge summary. ADC will make a concerted effort to obtain hospital records for those residents hospitalized within the past two years.

I. Ensure that ADC physicians appropriately prescribe medications and monitor blood levels and drug side-effects.

J. Ensure that diagnoses and treatment for acute orthopedic trauma, as well as for chronic and progressive orthopedic disorders, are timely.

K. Ensure that the primary care physicians diagnose fractures in a timely fashion.

L. Ensure that peer reviews and mortality reviews are thorough and that ADC staff respond to identified deficiencies. Peer review documents may only be reviewed by the Monitor.

VII. PHYSICAL AND NUTRITIONAL MANAGEMENT

Defendants shall ensure that all residents at ADC who are nutritionally at risk due to associated physical handicaps or medical problems are fed and otherwise cared for safely, adequately and appropriately. To this end, and at a minimum, Defendants shall:

A. Cease dangerous feeding practices and any feeding practice that poses an undue risk of harm to any resident.

B. Cease feeding residents in any unsafe position or faster than they can safely chew and swallow food.

C. Ensure that all residents' bodies are in proper alignment while they are being fed and for appropriate periods of time after they have been fed. Cease the practice of putting residents to bed or flat on their backs immediately after being fed. No resident shall be put to bed after being fed until sufficient time has passed to allow digestion of food.

D. Provide residents with all appropriate adaptive feeding equipment.

E. Require staff to feed residents either seated beside or next to the resident and not while standing, unless the resident's individual feeding plan specifically requires otherwise.

F. Utilizing postural drainage only when performed by a qualified respiratory therapist.

G. ADC will utilize a Nutritional Management Advisory Committee to oversee the implementation of the Feeding Program. This committee will include the administrators of the Swallowing/Dysphagia program, Therapy Services, Dietary, Medical Services, Nursing, Psychology, and a representative from each Clinical Nutritional Management Team, and where appropriate, external consultants. This committee will develop and oversee implementation of policies and practices designed to meet safely the nutritional management needs of the residents. The committee will assist in and support the delivery of services in accordance

with general nutritional management principles and resident-specific nutritional management plans.

H. Each resident of ADC will be assessed on an annual basis, with the exception of those residents who have already been identified as having feeding or nutritional problems and who will be assessed and evaluated as soon as the clinical Nutritional Management Teams have been established. For the general resident population, this assessment will include, at a minimum, a chart review that indicates a history of illness, weight gain or loss, medications, and potential food and drug interactions; review of current eating skills and/or behaviors, assessment for appropriate adaptive equipment, and a review of positioning during mealtimes. This assessment will be conducted under the direction of an assigned swallowing therapist who may be a licensed speech/language pathologist, occupational therapist, physical therapist, or nurse and who has had training in the management of feeding and nutrition problems of persons who are developmentally disabled. For those residents already identified with feeding or nutritional problems, referral to the Clinical Nutritional Management teams will be made for the purpose of providing an adequate comprehensive evaluation or determining that an adequate comprehensive evaluation has been performed.

I. Based on the assessment, an individualized dining plan will be written for each resident. Staff who feed the resident or supervise the resident during mealtimes will be trained on the

feeding or mealtime techniques or procedures called for in the dining plan. These staff will be monitored during mealtimes to determine that the individualized dining plan is implemented as designed.

J. Defendants will establish one Nutritional Management Clinical Team at ADC for every 25 residents requiring nutritional management. In the future, the number of residents served by a Nutritional Management Clinical Team may be adjusted with the approval of the Monitor. Each team will develop the special expertise needed to provide nutritional management services to residents who have feeding or nutritional problems, who require feeding by other persons, or who have behavior problems that interfere with mealtime. Each team will have direct clinical responsibilities for up to 25 residents who are highest risk for injury, illness or loss of function related to feeding or nutritional problems.

1. Composition of each Nutritional Management Clinical Team: Each team, as a whole, will include the following: a physical therapist, an occupational therapist, a registered dietitian, a nurse, and a physician. At least one team member will be a feeding specialist who has advanced training in the management of feeding and nutrition problems of persons who are developmentally disabled. This specialist may be a speech therapist who will serve in addition to the physical and occupational therapist on the team.

2. Clinical Team training: the teams will receive initial training from professionals with recognized expertise in evaluation and treatment of developmentally disabled persons with feeding and nutritional problems. Also, Clinical Team members will be engaged in continuing education activities that enhance their expertise in nutritional management.

3. Time commitments of Clinical Team members: members of each Clinical Team will be assigned to the team on a full-time basis except for the physician and dietician members of the Teams who will be assigned to the Team a minimum of 10 hours per week. The Developmental Medicine Physician will serve as a consultant to the Clinical Teams.

K. The therapists on the Clinical Nutritional Management Teams will serve on the Inter-Disciplinary Teams for those residents assigned to their team and will provide needed therapy services to these residents but will not serve residents who are not assigned to their Clinical Team, except in circumstances of occasional individual consultation or treatment.

L. Responsibilities of the Clinical Teams:

1. Continue to screen all residents as necessary to determine their need for nutritional management by observing mealtimes and interviewing staff, including nursing staff;

2. Perform a comprehensive evaluation, or ensure that a comprehensive evaluation has already been performed, of residents identified as possibly having feeding, nutrition or related

problems. Refer residents, as appropriate, for specialty consultations, examinations, and evaluations.

3. Review evaluations by the Clinical Team and specialists to determine which residents need nutritional management services by the Team.

(a) For residents who do not require the services of the clinical team, individualized dining plans will be developed and implemented according to ¶.B.3.

(b) Residents needing nutritional management services as part of the case load of a Clinical Nutritional Management Team will be those individuals who are determined to be at risk for injury, illness, or loss of function related to feeding or nutrition. Indicators that place an individual at risk include, but are not limited to, a history of aspiration or aspiration-related illness, unexplained weight loss or serious departure from ideal body weight range, history of eating inedible objects, history of rumination, history or recent incidents of gastro-intestinal disorders or difficulty, uncontrolled eating or unsafe eating behaviors, oral-motor dysfunction, residents fed by alternative methods, such as tube feedings, and persons at risk for any of the above conditions.

4. Formulate a treatment strategy, in consultation with a resident's Inter-Disciplinary Team, for each resident with feeding, nutrition or related problems.

5. Develop, in accordance with the treatment strategy, and implement a nutritional management plan for each resident including: positioning the resident (before, during, and after mealtimes) specific instructions to the person feeding and/or supervising the resident, and information to food service staff regarding consistency of diet or other dietary related information.

6. Train the staff who will feed the resident to competency on each specific feeding technique, procedure, and/or instruction contained in the individual nutritional management plan, including positioning.

7. Monitor the staff during mealtimes to ensure that the nutritional management plan is implemented as designed.

8. At least quarterly, a member of the Clinical Team will review each resident's nutritional management plan and the implementation of the plan, assess the effectiveness of the plan, report on progress to the Inter-Disciplinary Team, and make revisions to the plan, as needed, to improve effectiveness and ensure that the resident is fed safely and properly.

9. Document for each resident the activities of the Clinical Team and its effectiveness, including a record of problems found in the implementation of the nutritional management plans.

10. At such time as the Clinical Team has completed competency-based training of staff for each resident's Nutritional Management Plan and is confident that staff are

prepared to assume responsibility for feeding each resident, the team may assume an oversight role with specific staff assigned responsibility for day to day implementation of the nutritional management plan.

11. Individuals whose risk status has stabilized through medical, therapeutic, or behavioral interventions can be placed in a follow along status and removed from the regular case load of the Clinical Nutritional Management Team. For residents in follow along status, the Clinical Nutritional Management Team will review their cases monthly for six months and annually thereafter with the assigned feeding specialist to determine maintenance of safe and effective feeding.

M. Clinical Team members will conduct training on general nutritional management principles for all staff having direct contact with residents. Professional staff as well as direct care staff will be involved in this training and in mealtime activities.

N. ADC departments and ADC administration will assist and support the Clinical Teams to ensure the involvement of appropriate staff, particularly professional staff, in mealtime activities in accordance with general nutritional management principles and resident-specific nutritional plans.

VIII. NURSING

Defendants must ensure that nurses at ADC are providing adequate nursing care. To this end, and at a minimum, Defendants

shall ensure that nurses are trained to and do perform the following functions:

A. Properly identify or evaluate residents experiencing acute events such as vomiting, increased respiratory rate or other acute episodes, to determine the etiology of the event or illness.

B. Recognize and react to significant changes in residents' nutritional and medical status, such as weight and hydration.

C. Routinely perform ongoing monitoring of serious medical conditions, including such basic procedures as taking vital signs.

D. Respond to crucial information provided by other sources to allow appropriate interventions to medical problems to occur;

E. Timely examine the results of medical tests such as laboratory tests, x-rays and other information essential to provide adequate nursing and medical care.

F. Become familiar with the residents for whose care they are responsible and with their medications.

G. Administer medications in a manner consistent with basic nursing practices, in order to limit medication errors.

H. Properly record medication administration.

I. Monitor drug side-effects.

J. Ensure that residents do not experience unnecessary skin breakdowns.

K. Ensure the development of appropriate nursing care plans for residents.

IX. PROVISION OF CARE TO RESIDENTS WITH HEARING, VISION OR
COMMUNICATION NEEDS

Defendants shall provide adequate and appropriate hearing, vision, and communication services to residents. To this end, and at a minimum, Defendants shall:

A. Assess, evaluate, develop, and implement programs, including the use of augmentive devices as needed, for each resident with communication deficits, including deaf or hearing impaired residents, to teach appropriate communication skills, including sign language and the use of communications boards. For hearing impaired residents for whom amplification is effective, amplification devices shall be provided, along with any training necessary to allow the resident to use or become accustomed to wearing such devices. On units housing resident who are being taught sign language, at least one direct care staff person on each shift shall be taught sign language.

B. Assess and evaluate each resident with a vision impairment to determine his or her need for eyeglasses. Where needed, eyeglasses shall be provided along with training designed to ensure the resident can and does wear them. Defendants must provide training and services for individuals who are blind and provide assistive devices, such as canes or other trailing devices.

X. PHYSICAL AND OCCUPATIONAL THERAPY SERVICES

Defendants shall provide adequate and appropriate physical and occupational therapy services to all ADC residents who need such services, including proper positioning, adequate equipment,

including wheelchairs, and adequate physical therapy interventions. The goal of residents' physical therapy programs at ADC shall be to enhance the capacity of the individual to function, i.e., to help him or her to live safely and as independently as possible. To this end, and at a minimum, Defendants shall:

A. Adequately assess all ADC residents to determine their need for physical therapy (PT) services.

B. Ensure that PT evaluations, physical management plans, interventions, staffing, staff training, the "school based" physical therapy program and quality assurance of all the above are adequate to address the physical therapy needs of residents.

C. Provide adequate physical therapy services to enable residents to develop functional skills, and to avoid and ameliorate deformities, contractures, and inappropriate body growth. Defendants shall have physical and/or occupational-therapists with expertise in the field of developmental disabilities will evaluate all residents who have a physical disability, who require any special handling techniques (e.g., due to behavior problems, health problems, sensory deficits, etc.), or who have a nutritional management plan. The evaluation and treatment recommendations will include, at a minimum: (a) observation and analysis of movement during functional activities in natural environments; (b) obtaining information about and evaluating physical therapy-related concerns of direct care staff and other interdisciplinary team members; (c) evaluating

appropriateness of current wheelchair and other assistive technology, and possible need for assistive technology; and, (d) determining status of and/or potential for contractures, deformities, and pressure ulcers. Treatment recommendations will include, at a minimum, information regarding the need for the following: (a) direct physical and/or occupational therapy services, including the frequency of those services, by whom these services will be provided (registered therapist, therapy assistant, therapy aide); (b) a 24 hour a day physical management plan and the major elements of the plan, if it is needed; (c) formal and/or informal training goals or instructions for staff interaction; and (d) adaptive devices and/or therapeutic equipment.

D. Provide and utilize appropriate and necessary adaptive equipment for ADC residents who need such equipment.

E. Properly assess and treat acute orthopedic disorders and provide needed orthopedic devices; obtain consultations as needed.

F. Ensure that all residents in wheelchairs have chairs appropriately designed for their individual needs. No sling back or sling seat chairs shall be used, except for temporary transportation.

G. Ensure that PT, education and direct care staff are trained to enable them to properly position residents in their wheelchairs or other adaptive equipment. Defendants shall initiate regular, professionally designed and taught inservice

training for direct care workers and other staff in positioning, transferring, and implementing physical therapy programs for physically handicapped residents.

H. Ensure that staff actually monitor and correctly position residents throughout the day and implement a quality assurance program to monitor that residents are correctly positioned throughout the day. For individuals who require such positioning, Defendants shall develop a written physical management plan that details, at a minimum, the following:

- a. A schedule for therapeutic positions for the resident 24 hours a day, seven days a week, that have been identified as facilitating functional movement, preventing or reducing contractures or deformities, and/or improving general health. The physical management plan will be integrated with other activities in which the resident is engaged.
- b. Handling, lifting, and transferring techniques, including specification of the number of persons required to lift the resident.
- c. Therapeutic equipment and/or adaptive devices required by the individual to facilitate functional movement, prevent or reduce contractures or deformities, and/or improve general health.
- d. Any special precautions required to safely and properly handle, position, and/or transfer the resident.
- e. The name and position of the staff person responsible for: training other staff in the physical management plan,

the resident's functional goals and outcomes, the therapeutic positions, the handling and transfer techniques; obtaining recommended devices and equipment; and for oversight of the implementation and the evaluation of the effectiveness of the plan.

I. Acquire sufficient physical therapy staff, including physical therapists and assistants, and occupational therapy staff to provide adequate physical therapy and occupational therapy services to residents in need of such services.

J. Hire a Director of Therapy and Special services with the following qualifications:

a. A degree in physical therapy or occupational therapy with recent experience providing occupational or physical therapy services to persons developmental disabilities, including those with severe neuromotor and musculoskeletal impairments. Experience with school-age children and adults is preferable.

b. Knowledge of current literature and contemporary practices related to occupational and physical therapy services for persons with severe developmental disabilities, including: (1) appropriate assessment and intervention, including assistive technology; and (2) service delivery models that promote acquisition, retention, generalization, and maintenance of meaningful functional skills.

The Director of Therapy and Special Services will be responsible for, among other duties, supervising all professional

staff providing therapy services, for training or obtaining training for such staff, for maintaining an adequate continuing-education program, for providing consultation on individual cases, for ensuring physical and occupational therapy staff appropriately participate in interdisciplinary teams, for staff recruitment and retention and overseeing a quality assurance program relating to the efficacy and sufficiency of therapy services provided at ADC.

K. Retain a qualified consultant to assist them in implementing the above requirements.

XI. INDIVIDUAL WITH DISABILITIES EDUCATION ACT

Defendants shall, within the time frames set forth, take the following measures to fully comply with the Individuals with Disabilities Education Act (IDEA) 20 §§ U.S.C. 1400 et seq., and applicable state law. The requirements of this section of the order shall apply to all school-age children currently residing at ADC. To this end, and at a minimum, Defendants shall:

A. Retain the services of a consultant(s) with proven expertise in the field of special education services to perform or coordinate performance of the following services for school-age children at ADC in conjunction with educators affiliated with the Shelby County Public School system:

1. Thoroughly assess and evaluate the educational needs, strengths and deficits of school-age children.

2. Use the assessments and evaluations developed pursuant to Paragraph 1 above to develop a comprehensive statement of each

student's present level of performance as the basis for development of each child's Individualized Education Plan (IEP).

3. Provide in each student's IEP comprehensive short-term and long-term training objectives sufficient to address his or her unique educational needs.

4. Provide objectives are functional to each student in each IEP.

5. Identify specific education services to be provided each child in each IEP in order to achieve his or her learning objectives.

6. Write training objectives in such a manner that performance can be objectively measured and that education goals cover no more than a 12-month period, beginning with the IEP staffing date.

7. Develop and implement a system to provide for the generalization and maintenance of skills learned in the classroom.

8. Develop and implement adequate recordkeeping procedures to ensure that students' progress in meeting educational objectives is accurately monitored;

9. Adequately train educational staff to implement the IEPs; and

10. Provide related services, including, but not limited to, psychological services, physical and occupational therapy, and speech and language services, as necessary to allow children the benefit of special education services; and

11. Fully implement all IEPs.

B. Defendants shall place all school-aged children at ADC in appropriate educational programs consistent with recommendations contained in their IEPs in the Shelby County public school system

XII. RECORDKEEPING

Defendants shall maintain records and record keeping systems adequate and appropriate to effectuate the terms of this order.

XIII. RESIDENT PROPERTY

ADC will ensure residents' rights to own, keep and reasonably use personal possessions and property.

XIV. ADMISSION AND PLACEMENTS

A. Defendants shall reduce the population of ADC to 200 persons or fewer by September 30, 1997;

B. Defendants will ensure that residents are placed in an appropriate and safe manner and that placements in the community are adequate to meet the needs of the individuals there placed. In order to effectuate this requirement, the Defendants will, at a minimum, comply with the following:

1. Defendants are enjoined from admitting any additional residents to ADC except for emergency, short-term court-ordered admissions.

2. All ADC residents who were age 21 or under as of January 21, 1992, shall be placed in an appropriate community residence by no later than September 30, 1997. Defendants will exert their

best efforts and give priority to community placement of 75% of these individuals by September 30, 1996.

3. The nature of an individual's disability will not be a factor in the eligibility of that individual for placement consideration.

4. Defendants shall evaluate and develop an individualized placement plan (IPP) for each ADC resident who will be placed to ensure placement in appropriate, professionally developed, community-based programs which fully meet his or her individualized needs.

5. No ADC resident will be placed in a nursing home or other non-community placement, such as other state or private institutions.

6. Each IPP shall specify in detail the number and kind of programs and facilities needed, including residential, day programs, and specialized medical services, to serve the individual resident in the community. All services shall be integrated into the community to the maximum extent possible. Transition services, including home visits and overnights, as well as any other steps that need to be taken to ensure an orderly and smooth transition for the resident, must also be included in the IPP. Training for community facility staff must include meetings at ADC with staff familiar with the resident to be transferred prior to the actual placement.

For school-age children, the IPP shall also include a statement of the educational program, including related services

and transportation services, to be provided each child. No child shall be placed in any setting that is not fully capable of providing the educational services required by the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400-1485. All placements of children in residential settings must also comply with all applicable Tennessee state laws with regard to special educational services to handicapped children.

7. Defendants shall ensure that the community placement for each and every ADC resident meets the individual needs of the resident, as identified in the IPP. Under no circumstances will the speed or type of a placement be governed by anything other than the interests of the resident being placed. In order to accomplish this, the Defendants may use existing community placements only where they have certified that the placement meets the needs of the resident as identified in the IPP. Where there are no existing placements to meet the resident's needs, Defendants shall create or contract for a community placement that meets the needs of the resident as identified in the IPP. Defendants shall similarly certify that the new placement shall meet the needs of the resident as identified in the IPP.

8. The IPP and the placement certification for each resident will be filed with the Monitor 60 days before each placement is to occur. The Monitor shall review each IPP and placement certification to determine the adequacy of the placement. In situations where the Monitor determines the

placement is not adequate, no placement shall occur until the issue is resolved.

9. Defendants shall afford residents, parents and guardians an opportunity to participate in the placement process.

10. Defendants shall ensure that each resident placed in a community-based program pursuant to this order has an advocate selected by a process developed by Defendants.

11. Community placements shall be required to provide a safe and humane environment in which individuals are provided daily opportunities to learn, develop and maintain skills. All services, including medical and other health related services (e.g., physical therapy, occupational therapy, dental, speech and hearing, nutrition), and psychology, must be adequate and appropriate to meet the individual needs of the residents.

12. Defendants shall develop a case management system sufficient to ensure that the needs of each resident placed in a community-based program pursuant to this order are consistently reviewed and met. Every resident will have a case manager. No case manager shall have a case load in excess of 30 developmentally disabled persons. Case managers will be supervised by and report to a designated staff person of DMHMR and will receive a minimum of eighty hours training in the requirements identified in Paragraph P in addition to other job related training.

Case managers will be in regular, frequent contact with the people on their caseload in both their residential and day

program or work site. Case managers will observe participation in programs and therapeutic interventions and will evaluate the degree to which services in the individualized plan are being delivered. In no event will case managers visit each of their assigned residents less than once every two weeks.

13. Defendants shall survey all community-based programs and facilities operated or supported by state funds in which former ADC residents placed pursuant this Order reside at least annually to determine compliance with requirements referenced in Paragraph P herein. Reviews of the medical, psychological and psychiatric services available to these former ADC residents also must occur on an annual basis by experts chosen by the Monitor in each area being reviewed. Defendants shall ensure that all deficiencies found in community placements are remedied promptly. Defendants shall address continuing deficiencies in community placements by sanctions against the providers.

14. Investigations of all abuse or neglect allegations in community placements or programs in which residents covered by this Order reside must be done by trained investigators who report directly to the Assistant Commissioner of DMHMR.

15. Reports for each residence or program surveyed by Defendants pursuant to this Order shall be forwarded to the Monitor within 30 days of the site visit component of the survey.

16. All community-based programs and facilities covered by this Order shall meet state and local licensure requirements, DMHMR regulations and applicable fire safety codes. Defendants

must also ensure that all such community-based programs meet the requirements of Defendants' waiver plan and Defendants' current Quality Assurance Guidelines for Community Mental Retardation services.

17. All residents being placed from ADC automatically shall be deemed eligible for a waiver for a period of time not less than five years.

18. Defendants shall provide sufficient funding to fulfill the requirements in this agreement.

19. The Monitor is permitted unrestricted access to the community placements of former ADC residents placed pursuant to this Order and documentation regarding such placements for so long as the Court retains jurisdiction in U.S. v. Tennessee. The United States may have access to documentation regarding such placements upon request and access to the community placements of former ADC residents when issues regarding compliance with this order are raised by the Monitor.

Deficiencies identified by either the monitor or the United States in community placements must be addressed by Defendants immediately in accordance with Paragraph M.

XV. APPOINTMENT, DUTIES AND PRIVILEGES OF MONITOR

A. Following approval of this Order by the Court, the Court will appoint a Monitor to evaluate the Defendants' compliance with the provisions of this Order.

B. The duties of the Monitor will include:

1. Conduct on-site reviews at ADC and community placements of former ADC residents covered by this Order at least semi-annually to determine compliance with all provisions of this Order. A reasonable number of expert consultants may be retained to assist the Monitor in these reviews.
2. Produce a Compliance Report after each review which contains the results of the on-site review and a summary of the information contained in reports submitted by ADC, including any follow-up action taken by the Monitor. This report should be submitted to the Court and both parties.
3. Be available by phone, correspondence and, when needed, in person to the residents and staff of ADC, parents and guardians of residents of ADC, parties to this litigation, and to the Court.
4. Review all ADC policies and procedures adopted to implement the objectives of this Order and provide advice to Defendants regarding the efficacy and appropriateness of such policies and procedures.
5. Undertake special assignments, tasks, and investigations as may be requested or ordered by the Court.
6. Prepare and submit to the Court, with a copy to Defendants, annual budgets for all costs associated with the duties and responsibilities of the Monitor and revise these as necessary to accomplish special assignments, tasks, and investigations if these are required by the Court. The

Defendants will have fifteen (15) days after receipt to submit any comments to the Court.

7. Submit monthly invoices to the court for reimbursement, with a copy to Defendants. The Defendants will have fifteen (15) days after receipt to submit any comments to the court.

C. The Monitor will have unlimited access to all residents, staff, consultants, records (including individual resident's records), files (other than files of the ADC attorney), facilities, buildings and premises subject to this action. The Defendants will not refuse any reasonable request by the Monitor for documents or other information and will permit confidential interviews of staff. At the Monitor's request, a single representative of the Defendants will coordinate tours of ADC and community placements and gather documents or other information requested by the Monitor. The Monitor need not give advance notice of any tours of ADC but will give reasonable notice of intent to review documents that must be gathered in order to facilitate a review. These provisions will also apply to any consultant retained by the Monitor.

D. Retaliation against any state employee, ADC resident, or family member provided information to the Monitor or the Court or the United States is strictly prohibited and will be a violation of this Order, subjecting Defendants to contempt sanctions by the Court. A notice to this effect must be posted in all locations where employee and public notices are posted.

E. The monitor will be copied on all motions to the Court and correspondence between the parties.

F. The Monitor's notes and files will not be subject to discovery by either party.

G. In instances described in this order in which the Monitor may give or withhold approval, the Monitor's decision must consider the reasonableness, feasibility and efficacy of the proposed modification in satisfying the terms of this remedial order. In all instances in this Remedial Plan in which approval by the Monitor is specified, the Monitor's decision is effective immediately and will remain in effect unless overturned by the Court. If either party disagrees with the position taken by the Monitor, the following recourse will be available:

a. The dissatisfied party will inform the Monitor in writing of the basis for its disagreement with the Monitor's decision within ten working days; the other party will be given an opportunity to comment within ten working days; the Monitor will reconsider the decision to approve or disapprove and make a final decision within five working days of the receipt of the last set of party's comments.

b. If the dissatisfied party disagrees with the Monitor's reconsideration of the approval decision, the party may present the issue to the Court for determination within five working days of the Monitor's final decision.

XVI. ACCESS BY UNITED STATES

The United States and its attorneys, consultants and agents shall have reasonable access to the facilities, records, residents and employees of ADC. The United States is not required to give Defendants advance notice of its intent to tour ADC. Such access to ADC shall include, but not necessarily be limited to, the following:

A. Nothing in the Order shall preclude the United States from conducting additional discovery pursuant to the Federal Rules of Civil Procedure, such as, but not limited to, depositions or requests for admissions, on matters relating to enforcement or compliance with the Order.

B. Defendants shall bear all costs related to copying or otherwise supplying the United States or the Monitor with documents requested by the United States or the Monitor that relate to the Defendants' compliance with the Order.

C. The United States shall have access to all ADC records and documents, subject to the provisions of VI (L). Defendants shall provide to the United States copies of all documents provided to the Monitor upon request of the United States, subject to the provisions of VI (L).

D. The United States shall have reasonable access to speak with all ADC employees or consultants. Counsel for Defendants may be present during such interviews, if counsel so desires, provided such presence does not restrict or limit the United States' access to the ADC employees or consultants.

F. If employees or consultants of Defendants, on their own initiative, express a desire to speak privately with representatives of the United States, they shall be permitted to do so without repercussions by Defendants. Furthermore, retaliation against any individual, family member or resident based on communication with the United States is strictly prohibited. A notice to this effect must be posted in all locations where employee and public notices are posted.

G. Defendants reserve the right to seek relief from the Court in the event that the United States' access proves to be unreasonable.

XVII. TIME FRAME FOR IMPLEMENTATION

The Order requirements herein will be achieved by Defendants in accordance with the Schedule of Implementation, attached as Attachment A to this order.

XVIII. RETENTION REVIEWS

A. In order to effectuate the delivery of care consistent with constitutional requirements, the Superintendent will conduct retention reviews of all ADC employees. In making retention reviews, longevity within the institution or the State of Tennessee will not be a basis for retention.

1. During r the Superintendent of ADC will review for retention each professional staff person at ADC. Professional staff persons include those persons serving in positions such as administrators; physicians; dentists; dental hygienists;

pharmacists; nurses; physical, occupational, speech, communication and recreation therapists; dieticians; psychologists; audiologists; social workers; educational and vocational instructors; or in positions with equivalent titles.

2. During a period of eighteen (18) months beginning September 1, 1994, the Superintendent of ADC will review for retention all other staff at ADC.

3. Staff who are retained by the ADC Superintendent during the period of review, but whose permanent retention was deemed questionable, will be given one year of conditional retention while final determination is being made.

XVIV. JURISDICTION AND ENFORCEMENT

A. The Court shall retain jurisdiction of this action for all purposes under this Order until this action is dismissed.

B. (1) after this order has been in effect for at least three years, the Defendants may petition this Court for termination of this Order, in whole or in part, on grounds that they have achieved and demonstrated their ability to maintain compliance with its provisions.

(2) Upon filing of such a petition, the United States shall have 60 days within which to tour and respond. Thereafter, the Monitor will conduct a review of the compliance issues raised by the petition and response and report to the Court and the parties on the results of that review. The Court will conduct a hearing as soon as practicable thereafter.

C. The falsification of records, data, correspondence or other information required for determining the Defendants, compliance with this order is strictly prohibited and will be a violation of this order, subjecting Defendants to contempt sanctions by the Court. A notice to this effect will be posted in all locations where employee and public notices are posted.

DONE and ORDERED this 2 day of September, 1994 at Memphis, Tennessee.

Jon Phipps McCalla
United States District Judge

FOR THE STATE OF TENNESSEE:

FOR THE UNITED STATES:

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